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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: VSO-0565

This Decision concerns the eligibility of XXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."[1/] A Local Security Office suspended the Individual's access authorization pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, it is my decision that the Individual's access authorization be restored.

I. Background

The Individual is employed by a contractor at a DOE facility. The individual has also been included in the DOE's Personnel Assurance Program (PAP), a safety program that requires its participants to submit to annual physical examinations, blood tests, and psychiatric examinations. During the course of some of these tests, the Individual's gamma-glutamyltransferase, or GGT, level was elevated. Because an elevated GGT level can indicate excessive use of alcohol, a meeting was held with the Individual regarding his alcohol use. As a result of this meeting, a "Transmittal of Potentially Disqualifying Information" report was prepared and sent to the Local Security Office. Hearing Transcript at 229 (hereinafter referred to as "Tr."). Once the Local Security Office received this report, it called the Individual in for a Personnel Security Interview (PSI). Tr. at 18. The purpose of the interview was to discuss the report and the potential alcohol issues it

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[1/] Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to from time to time in this Decision as access authorization or security clearance.

raised. *Id.* The Individual was also referred to a DOE consultant psychiatrist (DOE Psychiatrist). *Id.* at 24. The DOE Psychiatrist interviewed the Individual and diagnosed him as suffering from alcohol dependence, in sustained partial remission. The DOE Psychiatrist's opinion was based primarily on the Individual's behavior that occurred 20 years prior to the interview and reported by the Individual during the PSI and the interview with the DOE Psychiatrist. The DOE Psychiatrist further opined that the Individual had not demonstrated sufficient evidence of reformation or rehabilitation. The DOE Psychiatrist also found that the Individual's alcohol dependency could cause a defect in judgment or reliability.

Because the derogatory information concerning the Individual had not been resolved, the local DOE Office obtained authority to initiate this administrative review proceeding. The Local Security Office then issued a Notification Letter to the Individual, citing the DOE Psychiatrist's diagnosis of Alcohol Dependence and the Individual's admission that he was continuing to consume alcohol as the derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J) and (h) (Criterion H).[2/]

Upon receipt of the Notification Letter, the Individual filed a response and requested a hearing. The DOE transmitted the Individual's hearing request to the Office of Hearings and Appeals (OHA) Director, and the OHA Director appointed me as the Hearing Officer in this case. 10 C.F.R. § 710.25(a), (b). I convened a hearing in this matter within the time frame prescribed by the DOE regulations. 10 C.F.R. § 710.25(g).

At the hearing, the Individual represented himself and offered his own testimony as well as the testimony of his personal physician, a psychiatrist with whom he had consulted, two co-workers, his wife, and his daughter. The Local Security Office presented three witnesses, a Personnel Security Specialist, the DOE Psychiatrist, and the site occupational medical director. The local DOE Office entered 30 exhibits into the record (Exhibits 1-1 to 7-1); the Individual tendered 29 exhibits.

[2/] Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion H refers to information indicating that an individual suffers from "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h).

II. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After a question concerning an individual's eligibility for an access authorization has been raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After consideration of all the relevant information in the record, I conclude that the security concerns raised by the derogatory information have been mitigated. Consequently, it is my decision that the Individual's access authorization should be restored.

III. Findings of Fact and Analysis

The derogatory information concerning Criterion H and Criterion J centers on the Individual's diagnosis of Alcohol Dependence. Such a diagnosis always raises security concerns. In response to the concerns, however, the Individual maintains that he is not, in fact, alcohol dependent and that he was incorrectly diagnosed by the DOE Psychiatrist. The relevant facts in this case are not in dispute.

As a PAP participant, the Individual was subject to physical tests, one of which showed GGT levels exceeding 100, *i.e.*, the level used by the local occupational medical office (OMO) as a threshold at which it begins to investigate an individual for alcohol use. Tr. at 233. The Individual's test results level peaked at 161, but ranged from 70 to 136 over the following eighteen month period. Approximately six and a half months after the initial test of 161, a meeting was held with the individual and members of the OMO. Notes from

this meeting were forwarded to the Local Security Office in the form of a "Transmittal of Potentially Disqualifying Information."

The Local Security Office then interviewed the Individual and concluded that he should be evaluated by a DOE Psychiatrist. *Id.* at 55. In reaching this decision, the Personnel Security Specialist relied on the elevated GGT levels and three incidents related to her by the Individual at the PSI. The first incident occurred in 1991, prior to the Individual's employment with the DOE Contractor. He was at a party after a training seminar and he consumed alcohol beverages and made some inappropriate comments in a loud voice. He was verbally reprimanded. *Id.* at 59. The second incident occurred in 1995. When he returned home from dinner with his wife, his daughter accused him of being intoxicated. *Id.* at 60. The third and final incident occurred in 1997. The Individual had volunteered for an overtime shift the day after his wedding anniversary. While he was out celebrating with his wife and friends on his anniversary, he told his wife he would have to either stop drinking or call in and tell his supervisor he was not going to be able to work. His wife indicated she wished to continue celebrating. He called his supervisor, within the time prescribed by his office's regulations, to tell him he would not be able to work the next day. *Id.* at 58. Based on these three separate, self-reported incidents, his elevated GGT level, and his expressed concern about his alcohol while in the Navy more than 20 years previously, he was referred to the DOE Psychiatrist for evaluation. *Id.* at 60.

Subsequent to interviewing the Individual, the DOE Psychiatrist wrote an evaluative report on the Individual describing her findings. Exhibit 3-1. The report states that the DOE Psychiatrist examined the Individual and administered two screening tests for substance abuse, the Substance Abuse Subtle Screening Inventory (SASSI) and the Alcohol Use Disorders Identification Test (AUDIT). *Id.* at 2. According to the DOE Psychiatrist, the SASSI showed a low probability of substance abuse, but the AUDIT showed a high probability of having an alcohol use disorder. *Id.* at 17. The blood test ordered by the DOE Psychiatrist showed a GGT level of 129, which the DOE Psychiatrist indicated was high. *Id.* at 18. Based upon this examination and her review of the DOE records, the DOE Psychiatrist determined that the Individual met a minimum number of the diagnostic criteria of the Diagnostic and Statistical Manual, 4th Edition (DSM-IV), to be diagnosed as suffering from "Alcohol Dependence in Sustained Partial Remission." Exhibit 3-1 at 22. She also opined that as of the date of her report the Individual had not shown adequate rehabilitation. To demonstrate rehabilitation, the DOE Psychiatrist recommended a number of treatment programs such as Alcoholics Anonymous combined with abstinence for two years. *Id.* at 23.

IV. The Hearing

At the hearing, the DOE Psychiatrist elaborated on her diagnosis. Pursuant to the DSM-IV, for someone to be diagnosed as alcohol dependent, an individual must meet three criteria from a list of criteria for alcohol dependence. Exhibit. 3-1 at 19. First, she determined that the Individual met Criterion (3) twenty years prior: "the substance is often taken in larger amounts or over a longer period than was intended." *Id.* This conclusion is based upon events 20 years in the past, when the Individual was a 19 year-old enlisted man in the Navy and became intoxicated while out with friends. *Id.* at 21. The DOE Psychiatrist supported her reliance on this criterion by claiming that the Individual would have to sleep "off-base" to recover from his drinking.[3/] Tr. at 213. She also concluded that the Individual had met Criterion (5) twenty years prior: "a great deal of time is spent in activities necessary to obtain the substance, . . ., use the substance . . . , or recover from its effects." Exhibit 3-1 at 21. She believed he devoted more time to consuming alcohol while he was in the Navy than he intended, and backed that up by claiming he stated he became intoxicated when he did not intend to. Tr. at 214. She also stated that the while in the Navy the Individual spent much time drinking. *Id.* at 214. Finally, she concluded that he met Criterion (7) twenty years prior: "the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance." Exhibit 3-1 at 21. By this, she mean that while in the Navy, the Individual continued to consume alcohol despite the fact that he had indigestion.[4/] Exhibit 3-1 at 21. At the Hearing, the DOE Psychiatrist referred to a different justification and claimed that her reliance on Criterion 7 was based on the Individual's blackout.[5/] Tr. at 99-100.

[3/] The DOE Psychiatrist appeared to take everything the Individual said negatively. For example, she emphasized that he met his wife in a bar. Moreover, there was an incident during his time in the Navy when he broke his arm. Although there is nothing in the record to indicate that he was drunk at the time, she relied upon it as an indication that he overindulged during this period.

[4/] The Individual was diagnosed with gastroesophageal reflux disease (GERD) in the mid 1980s. Ex. 3-1 at 12.

[5/] The Individual disputed that he blacked out. He claimed he might have gone to sleep or passed out. He believes there is a difference between passing out and blacking out. The one incident relied upon by the DOE Psychiatrist was a self-reported incident where the individual was drinking with a friend and they started arguing. The argument degenerated into a fist fight, and the Individual was knocked out. According to witnesses, the friend continued to kick the Individual until another person stepped in and stopped the friend. The Individual had no memory of the incident until told about it the next day. Tr. at 97-98.

The Individual's physician also testified – himself a recovering alcoholic and drug addict – that he has been treating the Individual for approximately 10 years. Tr at 32, 34. The physician testified that the Individual is not alcohol-dependent. More importantly the physician pointed out that the elevated GGT level alone could result from a number of factors, including medication the Individual was taking or the Tylenol the Individual took the night before a test. *Id.* at 27, 40. The doctor further stated that there are six other liver tests that could have been administered to the Individual that are better indicators of a problem with alcohol. *Id.* at 28. He concluded that he thought the DOE Psychiatrist's report was "outrageous." *Id.* at 42.

The Individual's Psychiatrist testified that she, too, disagreed with the DOE Psychiatrist's diagnosis. Tr. at 77. The Individual's Psychiatrist testified that, in her view, the diagnosis selectively pulled together "bits and pieces" of the Individual's life history to produce the diagnosis.[6/] Like the physician, the Individual's Psychiatrist stated that if he was alcohol dependent you would see an effect in his life. She posed the following questions: (1) had he ever shown up to work inebriated or (2) were there reports of him smelling of alcohol or ever appearing intoxicated. She concluded by saying that she would <u>not</u> make a "distant life diagnosis based on a current interview . . . I'm not going to pick through and paste together tidbits to come up with that diagnosis with the minimum number of criteria." Tr. at 114. She expanded on this by saying that if someone indicated that he had been through a treatment program 20 years previously and had been sober since that time,

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[6/] As an example, the Individual's Psychiatrist questioned the DOE Psychiatrist's reliance on an inconsistency between the Individual's answers to a question both the DOE Psychiatrist and the DOE had asked.

> I reviewed his last MMPI done at XXXXXXX, taken by the subject in May 2000 before he was actively confronted and monitored. This MMPI was within normal limits. What caught my attention though was page 11 of the report where critical items were described. One states was 3 84 [sic]: I was suspended from school one or more times for bad behavior. He answered TRUE. During my interview, I asked him to same question and his answer was "never". This unreliability and inconsistency of his statements signify his self-serving behavior to minimize or demy [sic] his problems to this interviewer.

Exhibit 3-1 at 24. The Individual's Psychiatrist determined that the only time the Individual had disciplinary trouble at school was in kindergarten. Moreover, it was an isolated incident, not a string of incidents. Tr. at 79. The Individual's Psychiatrist stated she did not think one incident in kindergarten was a "school" issue. She did not believe his cited answers were inconsistent. *Id.* I agree with her conclusion.

she would give them a diagnosis of alcohol dependence in remission. *Id.* at 115. She would not base a diagnosis on anecdotal information. *Id.*

The Individual's wife and youngest daughter both testified that the Individual does not have an alcohol problem. The youngest daughter, a teenager, testified that he is a good father and that she was probably happiest of all her friends. Tr. at 141. His older daughter submitted a letter stating that she is very lucky to have him as a father. She wrote that he has always been there for her, even when they are not in the same state. Individual's Exhibit at 2. Most of the exhibits the Individual submitted are letters from friends and co-workers. Almost all the letter writers extol his virtue as a dedicated family man.[7/] Many of the letter writers indicate the writer is familiar with the Individual in a social situation and, although he does drink, he does not overindulge. Overwhelmingly, the letter writers state that they are fortunate to be acquainted with the Individual. Individual's Exhibits 1-27.

V. Findings and Conclusions

After reviewing the extensive expert psychiatric testimony presented in this case as well as the other evidence contained in the record, I find that the Individual does not have an alcohol problem that raises a security concern. I was particularly impressed with the candid testimony of the Individual's physician and the Individual's Psychiatrist. The testimony of the physician and the Individual's Psychiatrist is convincing since their analyses of the Individual's condition are similar and are much more in accord with the available current facts than the DOE Psychiatrist's reading of events that occurred 20 year previously. The physician has known the Individual for over 10 years and is himself a recovering alcoholic. Also supporting their opinions was the fact that the OMO did not perceive a problem with the Individual's alcohol use, but only wanted to monitor him. [8/] The cover page of the meeting notes indicates there should be no change in the Individual's status in the PAP. Exhibit 4-2 at 1. In addition, the medical director testified he did see any problem. Tr. at 236. Furthermore, the psychiatric test results administered by the DOE Psychiatrist on which she relied are contradictory. According to the DOE Psychiatrist, the SASSI showed a low probability of substance dependence disorder and

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[7/] At the end of his wife's testimony, although she had been present for the entire hearing, the Individual asked that she be excused to attend their daughter's sporting activity. Tr. at 270. I find it telling that he knew his daughter's schedule and knew she would be disappointed if one of her parents was not present.

[8/] When I asked why the report of the minutes of the meeting held between OMO and the Individual was sent to the Local Security Office, the director of OMO replied that it was required to be sent. It was not an indication that OMO believed he should be investigated for alcohol use. Tr. at 244.

the AUDIT showed a high probability of having an alcohol use disorder. Exhibit 3-1 at 17. In the end, the only evidence of an alcohol-related problem are accounts of events self-reported by the individual. I find these accounts only very to be minimal evidence of a risk, even if those accounts were taken in a light most favorable to a finding of alcohol dependence.

In addition, the DOE Psychiatrist's testimony supporting her diagnosis was not convincing. Her attempt to apply the application of the DSM-IV criteria to the Individual was riddled with weaknesses and does not persuade me. The activities relied on in the diagnosis occurred more than 20 years before the Hearing. In terms of the Individual, half his lifetime. That material, taken in its most favorable light, supports that finding that the Individual satisfies three of the substance dependence criteria – *i.e.*, the minimum number of criteria needed for a such a finding. However, I am not persuaded by either her report or her testimony that the Individual's behavior while in the Navy 20 years ago rose to a level of alcohol dependence. Without some material to show a contemporary continuation of this type of behavior, some current evidence of risk, it is impossible for a reasonable person to ignore the gap of 20 years.

At the same time, I am persuaded by the reasonableness of the testimony of the Individual's Psychiatrist and physician: If the Individual were alcohol dependent, there would be at least some probative, contemporaneous evidence in his family or work life. No such evidence has been presented. Regarding the GGT levels, both the physician and Individual's Psychiatrist testified that relying on these results to conclude alcohol dependence is unsound. They both testified that there are many other triggers that will raise a GGT level, and it is not a reliable test for alcohol dependence. Both the physician and the Individual's Psychiatrist agreed that the prescription medicine the Individual was taking would raise his GGT level. In addition, the physician indicated taking Tylenol could raise a GGT level.

Furthermore, as he noted in his defense, the Individual's family life is very stable. His wife supports the truthfulness of his testimony and does not believe he has a problem with alcohol. His teenage daughter, who is still living at home, also does not see a problem with his alcohol use. His friends and co-workers support him and believe he is a good father, husband, friend, and co-worker. It is my belief that a person with significant alcohol problems at home or work would not be in a position to acquire 27 character letters. Ordinarily, we do not give much credence to character letters submitted by an individual. However, in the absence of any other evidence of current alcohol dependence, I believe that their submission supports the logic of the physician's and Individual's Psychiatrist's testimony that you would see an effect in his personal life if he were alcohol dependent, and there is no such evidence in this case. Further, his co-workers testified he is an excellent worker. He has never come to work intoxicated or smelling of alcohol. The one current incident the Local Security Office relied upon in support of its referral to the

DOE Psychiatrist actually indicates how conscientious he is. He called his supervisor within the prescribed time period to tell him he would not be able to work. He did not lie. He told him the truth.

In sum, I was convinced by the expert testimony of the physician and the Individual's Psychiatrist on the diagnosis issue. To the extent the DOE Psychiatrist's report raised a security concern, I find that concern has been mitigated.

IV. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a doubt regarding the Individual's eligibility for a security clearance. However, I find that doubt is minimal, and I also find sufficient evidence in the record to mitigate any concern raised. Therefore, I conclude that restoring the Individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should be restored.

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: March 6, 2003